

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 977 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VIJAY @ VIJU ATMARAM SINDHI TEKWANI

Versus

STATE OF GUJARAT

Appearance:

MR AR THACKER for Petitioner

MR HH PATEL AGP for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/12/1999

ORAL JUDGEMENT

#. Deputy Commissioner of Police, Control Room, Ahmedabad city passed an order on July 30, 1999 in exercise of power under section 56(b) of the Bombay Police Act (for short "the Act") externing the petitioner - Vijay alias Viju Atmaram Sindhi (Tekwani)

for a period of two years from the territories of Commissioner of Police, Ahmedabad city, Ahmedabad (Rural), Gandhinagar, Kheda and Mehsana districts. Earlier, notice under section 59 of the Bombay Police Act was issued. The allegations made therein were to the effect that the petitioner is involved in collection of installments from businessmen in the areas of Sardarnagar Circle and if anybody resists, he robs those persons with the help of knife. It is also alleged that the petitioner robs at the point of penknife by intimidating people passing by the Bholeshwar Society Circle. It is also alleged that the petitioner demands money for drinking liquor. That an offence under sections 320 and 323 of Indian Penal Code is registered against the proposed externee.

1.2 After the externment proceedings, the order came to be passed externing the petitioner as stated above. The petitioner preferred an appeal before the appellate authority as provided under section 60 of the Bombay Police Act which also came to be dismissed. The petitioner is therefore before this Court challenging the order of externment.

#. Learned counsel Mr. A.R.Thakker, appearing for the petitioner submitted that there is delay in passing the order. He submitted that in the externment proceedings, the last witness examined was on 10th June, 1999 and the order was passed on 30th July, 1999. It is submitted that the authority concerned has not taken into consideration the statements of 10 witnesses examined in respect of the proposed externee/petitioner. He then raised a legal point to the effect that the notice was issued and the externment proceedings were conducted by the Assistant Commissioner of Police whereas the order is passed by the Deputy Commissioner of Police. This is reflected from the affidavit-in-reply. Mr. Thakker submitted that there is non-compliance of section 59 by the externing authority. The order would therefore be rendered illegal and the same may be quashed.

#. Mr. H.H. Patel, learned Addl.Govt. Pleader appearing for the respondent authorities submitted that the delay between 10th June, 1999 and 30th July, 1999 cannot be considered as inordinate delay as such delay occurs in govt. machinery due to heavy workload and procedural requirements. Mr. Patel submitted that the Assistant Commissioner of Police was acting under the authority of the Deputy Commissioner of Police and after the proceedings were concluded, the decision was taken by the Deputy Commissioner of Police and therefore, the

argument advanced by the learned advocate for the petitioner, that section 59 is not complied with, will not be applicable to the petitioner's case and the petition therefore be dismissed.

#. Undisputedly, the order of externment is passed by the Deputy Commissioner of Police. Against this, the notice under section 59 and hearing thereon in the form of externment proceedings was carried out by the Assistant Commissioner of Police. It therefore, cannot be said that the externing authority gave any audience to the externee. An attempt is made to show that the Assistant Commissioner of Police was authorized by the Deputy Commissioner of Police for conducting the proceedings including the issuance of notice. But there is nothing on record to indicate that such authorization was given, as contemplated under section 59 of the Act, even the affidavit-in-reply is silent on this point. Under the circumstances, in view of the decision in the case of *Husenmiya @ Jago Rajakmiya Kadri v. State of Gujarat & ors.* reported in 1999(3) GCD 2259 (Guj), the statements recorded by the externing authority cannot be said to be genuine as the principles of natural justice would stand violated and there would be non compliance of section 59 of the Bombay Police Act. The petition therefore deserves to be allowed on this count alone and the same is allowed.

#. The order of externment passed by the Deputy Commissioner of Police, Control Room, Ahmedabad City, dated 30th July, 1999 externing Vijay alias Viju Atmaram Sindhi (Tekwani) is hereby quashed and set aside. Rule is made absolute with no order as to costs.

(A.L. DAVE, J.)

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